

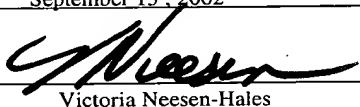
BOSE McKINNEY & EVANS LLP

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(317) 684-5000

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 2123 }
Atty. Docket: 9090-0149 }
Applicant: Lindner et al. }
Title: APPARATUS FOR USE IN AN INDUSTRIAL }
PROCESS AND PLANT INCLUDING SUCH }
APPARATUSES AS WELL AS METHOD FOR }
SIMULATING OPERATION OF SUCH PLANT }
Serial No.: 09/415,815 }
Filed: October 12, 1999 }
Examiner: Garcia Otero, E. }

<p><u>Certificate Under 37 C.F.R. § 1.8(a)</u></p> <p>I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box Non-Fee Amendment, Commissioner for Patents, Washington, D.C. 20231</p> <p>on <u>September 13, 2002</u></p> <p> Victoria Neesen-Hales</p> <p>Dated: <u>September 13, 2002</u></p>

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Technology Center 2100

PETITION UNDER 37 C.F.R. § 1.8(b) TO ACCEPT PAPERS AS TIMELY FILED
AND
RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT
MAILED AUGUST 14, 2002

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicants thank the Examiner for the courtesies extended to Kelly Blaylock and Christine Orich during the telephone interviews of August 27 and September 12, 2002. Applicants respectfully submit the following Petition and Response to the Notice of Non-Compliant Amendment mailed August 14, 2002.

PETITION

Applicants respectfully request that the Preliminary Amendment originally filed October 12, 1999, and resubmitted concurrently herewith and previously on June 7, 2002, be accepted as timely filed.

As the attached documents indicate, the Preliminary Amendment was originally filed concurrently with the application. Accordingly, the Preliminary Amendment correctly indicated that the serial number was "unknown."

The Office Action mailed February 13, 2002 indicated that the Preliminary Amendment had not been entered. Because the Preliminary Amendment was properly submitted concurrently with the application, the failure to enter the Preliminary Amendment as originally filed was a Patent Office error.

In the Response filed May 9, 2002, Applicants requested entry of the Preliminary Amendment. Subsequently, on June 6, 2002, the Examiner requested that a copy of the original Preliminary Amendment be submitted by fax.

On June 7, 2002, Applicants submitted by fax copies of the Preliminary Amendment and return post card, and a Statement declaring that the copies were accurate and complete. During the teleconferences of August 27 and September 12, 2002, the Examiner indicated to Applicants' representatives that the Statement and accompanying copies had been misfiled due to a typographical error in the serial number on the Statement. However, the Examiner also indicated that since the application title and inventor names were correctly identified on both the original Preliminary Amendment and the Statement, and were different from the application where the Statement was believed to have been misfiled, any misfiling that occurred was a Patent Office error.

Applicants again submit concurrently herewith a complete and accurate copy of the Preliminary Amendment and return post card.

For at least these reasons, Applicants respectfully request that the Preliminary Amendment originally filed on October 13, 1999 be accepted as timely filed.

RESPONSE

to Notice of Non-Compliant Amendment

The Office communication mailed August 14, 2002 contained a Notice of Non-Compliant Amendment (37 CFR § 1.121) (the "Notice"), relating to the "amendment filed on 6/7/02," which "amendment" consisted of a copy of the Preliminary Amendment that had been originally filed on October 12, 1999.

The Notice of Non-Compliant Amendment was improperly issued because the Preliminary Amendment was originally filed prior to the effective date (March 1, 2001) of the amendments to 37 CFR § 1.121. Applicants are not required to submit a clean version of the claim amendments originally submitted in the October 12, 1999 Preliminary Amendment. Nonetheless, as a courtesy to the Examiner and in order to advance prosecution of this case, Applicants submit as a separate paper herewith a clean copy of the claims that were amended by the October 12, 1999 Preliminary Amendment. Applicants respectfully request that the Preliminary Amendment be entered as originally filed.

Summary of Papers Enclosed Herewith

The following documents are submitted as separate papers concurrently herewith:


- (1) A copy of the Preliminary Amendment filed October 12, 1999;
- (2) A copy of the return postcard indicating that the Preliminary Amendment was received by the Patent Office and assigned a filing date of October 12, 1999;
- (3) A statement certifying that the above copies are accurate and complete; and
- (4) A clean copy of the claims amended by the Preliminary Amendment.

Final Remarks

As indicated in Applicants' May 9, 2002 Response, claims 1-37 of the above-noted application are believed to be in condition for allowance. Applicant respectfully requests that the Examiner so find and issue a Notice of Allowance in due course. The Examiner is asked to call Applicant's attorneys, James A. Coles, at 317-684-5282, or Christine Orich, at 317-684-5414, to address any outstanding issues in order to expedite the prosecution of this application for all parties.

Respectfully submitted,

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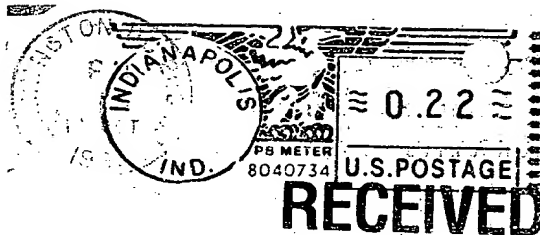
Express Mail No.: EM1345059134505US
Mailed: October 12, 1999
Applicants: Georg et al.
Title: APPARATUS FOR USE IN AN INDUSTRIAL PROCESS ET AL
Serial No.: Unknown
Attorney Docket: 9090-0149

<input checked="" type="checkbox"/>	Certificate of Express Mail Under 37 CFR 1.10
<input checked="" type="checkbox"/>	Application Cover Sheet (In Duplicate)
<input checked="" type="checkbox"/>	Specification (6 Pages)
<input checked="" type="checkbox"/>	Claims (37 Claims)
<input checked="" type="checkbox"/>	Abstract
<input checked="" type="checkbox"/>	Two (2) Sheets Formal Drawings
<input checked="" type="checkbox"/>	Two (2) Declarations and Powers of Attorney
<input checked="" type="checkbox"/>	Two (2) Assignments from inventors to Endress + Hauser GmbH + Co.
<input checked="" type="checkbox"/>	Two (2) Recordation Forms
<input checked="" type="checkbox"/>	Claim of Priority
<input checked="" type="checkbox"/>	Certified Copy Priority Document
<input checked="" type="checkbox"/>	Preliminary Amendment
<input checked="" type="checkbox"/>	Check in the Amount of \$1,146.00

JC564 U.S. PTO
09/415815

10/12/99

THE STAMP OF THE PATENT OFFICE HEREON INDICATES RECEIPT
OF THE ABOVE-LISTED PAPERS

JAC/sw



OCT 21 1999

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